# REINSTATEMENT AND VALIDATION OF UNITED STATES OIL AND GAS LEASES

## HEARING

BEFORE THE

## SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

OF THE

## COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

FIRST SESSION

ON

**S. 383**

TO PROVIDE FOR THE REINSTATEMENT AND VALIDATION OF UNITED STATES OIL AND GAS LEASE NUMBERED M-16402 (ND) ACQ.

**S. 466**

TO PROVIDE FOR THE REINSTATEMENT AND VALIDATION OF UNITED STATES OIL AND GAS LEASE NUMBERED M-15450 (ND)

**S. 651**

TO PROVIDE FOR THE REINSTATEMENT AND VALIDATION OF UNITED STATES OIL AND GAS LEASE NUMBERED W-46102

**S. 1457**

TO REINSTATE UNITED STATES OIL AND GAS LEASE NUMBERED OR-13713

**S. 1605**

TO PROVIDE FOR THE REINSTATEMENT AND VALIDATION OF UNITED STATES OIL AND GAS LEASE NUMBERED ES-20644

SEPTEMBER 17, 1981

**Publication No. 97-42**

Printed for the use of the
Committee on Energy and Natural Resources

U.S. GOVERNMENT PRINTING OFFICE

85-691 O WASHINGTON: 1981

S 311-79

## COMMITTEE ON ENERGY AND NATURAL RESOURCES

JAMES A. McCLURE, Idaho, *Chairman*

MARK O. HATFIELD, Oregon
LOWELL P. WEICKER, JR., Connecticut
PETE V. DOMENICI, New Mexico
MALCOLM WALLOP, Wyoming
JOHN W. WARNER, Virginia
GORDON J. HUMPHREY, New Hampshire
FRANK H. MURKOWSKI, Alaska
DON NICKLES, Oklahoma
JOHN P. EAST, North Carolina
JOHN HEINZ, Pennsylvania

HENRY M. JACKSON, Washington
J. BENNETT JOHNSTON, Louisiana
DALE BUMPERS, Arkansas
WENDELL H. FORD, Kentucky
HOWARD M. METZENBAUM, Ohio
SPARK M. MATSUNAGA, Hawaii
JOHN MELCHER, Montana
PAUL E. TSONGAS, Massachusetts
BILL BRADLEY, New Jersey

MICHAEL D. HATHAWAY, *Staff Director*
CHARLES A. TRABANDT, *Chief Counsel*
D. MICHAEL HARVEY, *Chief Counsel for the Minority*

---

### SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

JOHN W. WARNER, Virginia, *Chairman*

JOHN HEINZ, Pennsylvania
GORDON J. HUMPHREY, New Hampshire
MALCOLM WALLOP, Wyoming
FRANK H. MURKOWSKI, Alaska

SPARK M. MATSUNAGA, Hawaii
J. BENNETT JOHNSTON, Louisiana
DALE BUMPERS, Arkansas
BILL BRADLEY, New Jersey

JAMES A. McCLURE and HENRY M. JACKSON are Ex Officio Members of the Subcommittee
ROGER SINDELAR, *Counsel*

# CONTENTS


| | Page |
|---|---|
| S. 383 | 2 |
| S. 466 | 4 |
| S. 651 | 6 |
| S. 1457 | 8 |
| S. 1605 | 10 |


## STATEMENTS


| | |
|---|---|
| Jackson, Hon. Henry M., a U.S. Senator from the State of Washington | 12 |
| Pierini, William J., area landman, Northern Division, Denver regional office, Amoco Production Co | 50 |
| Russell, David C., Deputy Assistant Secretary, Land and Water Resources, Department of the Interior, accompanied by Dale Zimmerman, Assistant to the Director, Bureau of Land Management | 31 |
| Schmitt, James, Houston counsel, Tenneco Oil Co., accompanied by Millard Carr | 58 |
| Stensrud, R. K., president, Reichhold Energy Corp., accompanied by Patrick Norton, legal counsel, and Edward E. Shea, general counsel | 12 |
| Warner, Hon. John W., a U.S. Senator from the State of Virginia | 1 |
| Wellingham, Robert W., president, Integrity Oil & Gas Co | 54 |

# REINSTATEMENT AND VALIDATION OF UNITED STATES OIL AND GAS LEASES

THURSDAY, SEPTEMBER 17, 1981

U.S. SENATE,
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 10 a.m., in room 3110, Dirksen Office Building, Hon. John W. Warner, presiding.

Present: Senators Warner and Jackson.

Also present: Roger Sindelar, counsel; D. Michael Harvey, chief counsel for the minority; and Ron Andes, congressional fellow.

## OPENING STATEMENT OF HON. JOHN W. WARNER, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator WARNER. Good morning, ladies and gentlemen.

This hearing has been scheduled to reconsider S. 383, S. 466, S. 651, S. 1457 and S. 1605, bills to provide for the reinstatement and validation of U.S. oil and gas leases.

Today we have witnesses scheduled who will provide us with testimony on the bills. We will begin with David C. Russell, Deputy Assistant Secretary of the Department of the Interior.

Before we begin with the testimony, I will yield to my distinguished colleague, Senator Jackson, and insert the text of the bills before us this morning.

[The text of the bills follow:]

II

97TH CONGRESS
1ST SESSION

# S. 383

To provide for the reinstatement and validation of United States oil and gas lease numbered M 16402 (ND) Acq.

---

IN THE SENATE OF THE UNITED STATES

FEBRUARY 3 (legislative day, JANUARY 5), 1981

Mr. ANDREWS (for himself and Mr. BURDICK) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

# A BILL

To provide for the reinstatement and validation of United States oil and gas lease numbered M 16402 (ND) Acq.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That, notwithstanding any decision to the contrary heretofore made by the Secretary of the Interior of the United States or his authorized agents or representatives, United States oil and gas lease numbered M 16402 (ND) Acq. shall be held not to have terminated by operation of law or otherwise on October 1, 1980, but shall be deemed to be in full force and effect and the terms of said lease extended for a period equal

to the unexpired portion of the lease remaining on October 1, 1980, and so long thereafter as oil and gas is produced in paying quantities: *Provided,*, That within thirty days after the receipt of written notice from the Secretary of the Interior of the amount of rental then accrued to the United States under said lease and unpaid by the last recordholder of said lease, said recordholder shall tender payment of said amount of rental. Notice shall be given by the Secretary within thirty days after the effective date of this Act.

II

97TH CONGRESS
1ST SESSION

# S. 466

To provide for the reinstatement and validation of United States oil and gas lease numbered M–15450 (ND).

---

IN THE SENATE OF THE UNITED STATES

FEBRUARY 6 (legislative day, JANUARY 5), 1981

Mr. BURDICK (for himself and Mr. ANDREWS) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

# A BILL

To provide for the reinstatement and validation of United States oil and gas lease numbered M–15450 (ND).

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That, notwithstanding any decision to the contrary heretofore made by the Secretary of the Interior of the United States or his authorized agents or representatives, United States oil and gas lease numbered M–15450 (ND) shall be held not to have terminated by operation of law or otherwise on July 1, 1980, but shall be deemed to be in full force and effect and the terms of said lease extended for a period equal to the

unexpired portion of the lease or any extension thereof remaining on July 1, 1980, or for a period equivalent to the time interval between July 1, 1980, and the date on which the Secretary of the Interior reinstates said lease, whichever is the shorter time period, and so long thereafter as oil and gas is produced in paying quantities: *Provided,* That within thirty days after the receipt of written notice from the Secretary of the Interior of the amount of rental then accrued to the United States under said lease and unpaid by the last recordholder of said lease, Amoco Production Company, doing business in Denver, Colorado, its successors or assigns, said recordholder shall tender payment of said amount of rental. Notice shall be given by the Secretary within thirty days after the effective date of this Act.

85-691 O—81——2

II

97TH CONGRESS
1ST SESSION

# S. 651

To provide for the reinstatement and validation of United States oil and gas lease numbered W-46102.

---

IN THE SENATE OF THE UNITED STATES

MARCH 6 (legislative day, FEBRUARY 16), 1981

Mr. WALLOP introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

# A BILL

To provide for the reinstatement and validation of United States oil and gas lease numbered W-46102.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That, notwithstanding any decision to the contrary heretofore made by the Secretary of Interior of the United States or his authorized agents or representatives, United States oil and gas lease numbered W-46102 shall be held not to have terminated by operation in full force and effect and the terms of said lease extended for a period equal to the unexpired portion of the lease remaining on August 31, 1980, and so long

thereafter as oil and gas is produced in paying quantities: *Provided,* That within thirty days after the receipt of written notice from the Secretary of Interior of the amount of rental then accrued to the United States under said lease and unpaid by the last recordholder of said lease, said recordholder shall tender payment of said amount of rental. Notice shall be given by the Secretary within thirty days after the effective date of this Act.

II

97TH CONGRESS
1ST SESSION

# S. 1457

To reinstate United States oil and gas lease numbered OR-13713.

---

IN THE SENATE OF THE UNITED STATES

JULY 9 (legislative day, JULY 8), 1981

Mr. JACKSON (for himself and Mr. GORTON) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

# A BILL

To reinstate United States oil and gas lease numbered OR-13713.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That, notwithstanding any decision to the contrary heretofore made by the Secretary of the Interior of the United States or his authorized agents or representatives, United States oil and gas lease numbered OR-13713 shall be held not to have terminated by operation of law or otherwise on October 1, 1976, but shall be deemed to have continued in full force and effect from that date, and the term of said lease shall be extended to October 1, 1985, and so long thereafter as oil or

gas is produced in paying quantities: *Provided,* That within thirty days after the effective date of this Act, the Secretary of the Interior shall give notice to the last recordholder of lease OR–13713, Fay Reuth, and to her assignee, Reichhold Energy Corporation, doing business in Tacoma, Washington, said notice to indicate the amount of rental then accrued to the United States under lease OR–13713 and unpaid, and that within thirty days of receipt of the aforesaid notice from the Secretary of the Interior, Fay Reuth or Reichhold Energy Corporation shall tender payment of said amount of rental.

97TH CONGRESS
1ST SESSION

# S. 1605

To provide for the reinstatement and validation of United States oil and gas lease numbered ES 20644.

---

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 10 (legislative day, SEPTEMBER 9), 1981

Mr. JOHNSTON introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

# A BILL

To provide for the reinstatement and validation of United States oil and gas lease numbered ES 20644.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That, notwithstanding any decision to the contrary heretofore made by the Secretary of the Interior of the United States or his authorized agents or representatives, United States oil and gas lease numbered ES 20644 shall be held not to have terminated by operation of law or otherwise on July 1, 1980, but shall be deemed to be in full force and effect and the terms of said lease extended for a period equal to the unex-

pired portion of the lease remaining on July 1, 1980, and so long thereafter as oil or gas is produced in paying quantities: *Provided,* That within thirty days after the receipt by the last leaseholder of record of said lease of written notice from the Secretary of the Interior of the amount of rental then accrued to the United States under said lease and unpaid by said leaseholder, said leaseholder shall tender payment of said amount of rental. Notice shall be given by the Secretary within thirty days after the effective date of this Act.

## STATEMENT OF HON. HENRY M. JACKSON, A U.S. SENATOR FROM THE STATE OF WASHINGTON

Senator JACKSON. Thank you, Mr. Chairman.

One of the items on the agenda is S. 1457. I understand all these bills relate basically to the same problem involving reinstatement and validation of oil and gas leases.

In this particular case, Mr. Chairman, the Reichhold Energy Corp. lease was terminated by reason of the fact that while the payment was made in a timely fashion, it was not the amount it should have been.

When I was chairman of this committee there were a lot of problems of a similar nature. The problem arose where there was a good faith effort and through a technicality, the lease was terminated. I would hope there would be favorable action on this as well as others that are similarly situated.

I understand the administration has no objection to this bill, S. 1457.

Senator WARNER. Would it convenience you, Senator, in your schedule if we had this company's representative testify first?

Senator JACKSON. Yes, please do.

Senator WARNER. Mr. Stensrud, if you will come forward, please. We will place your statement into the record.

## STATEMENT OF R. K. STENSRUD, PRESIDENT, REICHHOLD ENERGY CORP. ACCOMPANIED BY PATRICK NORTON, LEGAL COUNSEL, AND EDWARD E. SHEA, GENERAL COUNSEL

Mr. STENSRUD. Thank you.

My name is R. K. Stensrud. I am president of Reichhold Energy Corp. REC is a wholly owned subsidiary of Reichhold Chemicals, Inc. of White Plains, N.Y. I am here today to testify on behalf of S. 1457.

With me is our legal counsel, Mr. Patrick Norton who may be able to answer any legal questions that may come up and Edward E. Shea, our general counsel for Reichhold Chemicals and general counsel for Reichhold Energy.

I will simply point out the importance of this lease and that is we entered into the oil and gas business in 1975 because of a shortage of natural gas for our St. Helens, Oreg., anhydrous ammonia/urea fertilizer plant. Because of problems happening in Canada we were not able to get enough supplies so we started exploratory efforts in Oregon much to everyone's surprise. We knew precious little about the oil and gas business at that time. We did in fact in 1979 in spite of all predictions make the first hydrocarbon discovery in the Pacific Northwest of any commercial significance.

We now have eight producing wells within 23 miles of our plant. We are satisfying nearly the entire needs of the plant for our natural gas supply and are able to continue the manufacture of fertilizer without problems.

The lease in question in S. 1457 is within 10 or 15 miles of those discovery wells. They are right in the center of what we feel is an important exploratory area. We have built two wells in that area with a cost of about half a million dollars.

To lose this lease would in fact materially affect our program in that area.

I would appreciate consideration.

[The prepared statement of Mr. Stensrud follows:]

September 17, 1981

TESTIMONY BEFORE SUBCOMMITTEE ON
ENERGY AND MINERAL RESOURCES

MR. CHAIRMAN, SENATORS:

My name is R. K. Stensrud and I am the President of Reichhold Energy Corporation. "REC" is a wholly-owned subsidiary of Reichhold Chemicals, Inc. I am here today to testify on behalf of S. 1457.

REC's Interest in Lease OR 13713

REC is one of the leading developers of oil and gas resources in the Pacific Northwest. We made the first commercial discovery of hydrocarbons in that region in May 1979. By mid-1980, we were producing over twenty million cubic feet per day of natural gas from five wells. We have been providing virtually all the fuel and feedstock gas required for Reichhold Chemical's St. Helens, Oregon anhydrous ammonia/urea fertilizer plant from this production. Recently we have had a number of additional successful wells, and we believe that the prospects for further development in the region are promising.

Lease OR 13713 is in a portion of Columbia County, Oregon known as "Pittsburgh Prospect." This is not far from the site of our initial discovery of hydrocarbons in the Pacific Northwest, and we believe Pittsburgh Prospect is one

85-691 O—81——3

of the most promising sites in the region. REC holds a number of other oil and gas leases in the immediate vicinity of Lease OR 13713. We have sunk two exploration wells at nearby sites in Pittsburgh Prospect at a cost of approximately $500,000, and our total exploration investment in the immediate vicinity of Lease OR 13713, together with that of our joint venture partners, is approximately $1.5 million.

Lease OR 13713 was originally issued to an individual in October 1975. That individual assigned all of her rights in the leasehold to REC shortly thereafter, and REC has, as a practical matter, been solely responsible for the lease ever since. As I will explain, REC's initial application for approval of the assignment of the lease rights was denied for technical reasons. The individual therefore remains the lessee of record, and the enactment of S. 1457 would result in the reinstatement of her rights to the lease. REC, however, remains the assignee of those rights and intends to request again BLM's approval of the assignment. We have no reason to believe such approval would not now be forthcoming.

The Processing of REC's Applications

Interior Department regulations require the approval of the Bureau of Land Management for the assignment of all interests in federal oil and gas leases. In accordance with those regulations, REC filed in March 1976 an application

for the approval of the assignment to REC of rights in Lease OR 13713. REC unintentionally omitted certain information required in that application, and all of its problems with Lease OR 13713 have stemmed from that omission.

The omitted information was publicly available. We have no reason to believe that BLM would have disapproved the assignment had that information been included in the application. If, moreover, REC had been informed that the application was incomplete, it would have remedied the omission promptly. BLM did not act on the application, however, for fourteen months. REC therefore had no reason to believe its application was defective or to take remedial action.

While the application was pending, REC explored the leasehold and determined that approximately one-third of it was not likely to be productive. When the annual rent came due in October 1976, REC therefore filed a relinquishment of the unproductive one-third of the lease and paid the amount due on the remainder.

In May 1977, BLM acted on both the application for approval of the assignment and REC's partial relinquishment of the leasehold. Because the application for approval of the assignment was incomplete, BLM rejected that application. Because the assignment was ineffective, BLM held that REC did not have the authority to relinquish part of the leasehold and rejected the relinquishment as well. And because

the relinquishment was ineffective, BLM held that rent on the entire original leasehold had been due on October 1, 1976. Finally, since the entire rent had not been paid (it was $280 short), BLM held that the lease terminated automatically in accordance with Section 188(c) of the Mineral Leasing Act of 1920, 30 U.S.C. § 188(c).

REC's Litigation

REC filed suit in the United States District Court for the District of Columbia, arguing, in essence, that if BLM had processed REC's applications in a reasonable period of time, REC would have corrected the inadvertent omissions, and the chain of events leading to the termination of the lease would never have occurred. In an opinion dated April 30, 1980, Judge Pratt denied REC's motion for summary judgment. A copy of Judge Pratt's decision is attached. Judge Pratt held that 30 U.S.C. § 188(c) and its legislative history established that when there is an inadvertent failure to pay the full amount of rent due on a federal oil and gas lease, that failure must be corrected within twenty days of the date the rent was due or the lease will terminate as a matter of law. For cases of inadvertent failure to pay the full rent within the twenty-day period, Judge Pratt held (p. 8 n. 7) that Congress intended to require the aggrieved lessee to seek private relief legislation.

REC appealed Judge Pratt's decision to the United States Court of Appeals for the District of Columbia Circuit. That appeal was denied in May 1981.

Section 188(c) of the
Mineral Leasing Act of 1920

Under the original version of the Mineral Leasing Act of 1920, there was no twenty-day grace period in which inadvertent underpayments of rent could be rectified. The Interior Department interpreted this omission as requiring that any underpayment of rent on the date due automatically terminated the lease. This included underpayments of less than one dollar and underpayments resulting from inaccurate billing notices sent by Interior itself. The result was a deluge of private relief legislation on behalf of lessees whose leases had terminated for no fault -- or no significant fault -- of their own.

One of the principal purposes of the 1970 amendments to the Mineral Leasing Act was to end these inequities produced by the original version of the Act and obviate the need for large numbers of private relief bills. An amendment to § 188(c) thus provided a twenty-day period within which the Secretary has discretion to reinstate a lease on which the rent was unintentionally underpaid.

The authors of the 1970 amendments specifically recognized that a twenty-day cutoff period might still leave some people who had inadvertently underpaid their rent but had, for one reason or another, been unable to remedy that underpayment within the twenty days. Nevertheless, presumably because of the importance of certainty in title in land, those authors determined that a twenty-day cutoff period was advisable. For other meritorious cases, they specifically anticipated that private relief legislation, such as that presented here in S. 1457, would be the appropriate remedy. Thus, the House Interior Committee Report on the 1970 amendments expressly states:

> "It should also be emphasized that reinstatement by the Secretary is limited to those situations where the full amount of the rental due, including any back rental, is paid or tendered within 20 days of the due date . . . . It is recognized that this 20-day limitation on reinstatements means that a small percentage of terminated leases, otherwise deserving, may not be reinstated under this legislation. However, in balancing the advantage of a more liberal relief provision against the committee's desire to reduce the incentive for 'intentional' mistakes, the latter course was chosen. In the event truly deserving cases arise that cannot meet the 20-day provision recourse to private relief legislation may be necessary." (Emphasis added.)

H.R. Rep. No. 91-1005, 91st Cong., 2d Sess., reprinted in [1970] U.S. Code Cong. & Ad. News. 3002, 3005. Judge Pratt expressly cited this legislative history as indicating that

such private relief legislation might be appropriate for REC. D.C. Dec. at 8 n. 7. (BLM, too, expressly stated in its brief before the United States Circuit Court of Appeals for the District of Columbia (at 16-17) that this would be an appropriate remedy.)

Summary

Lease OR 13713 is important to REC's attempts to develop the hydrocarbon resources of the Pacific Northwest. Its termination resulted from an unintentional underpayment of the rent on that lease, in the amount of some $280. The underpayment itself resulted from minor, again unintentional errors in filing various applications before BLM, and from BLM's lengthy delays in processing those applications. We believe that this situation is precisely the kind envisioned by the authors of the 1970 amendments to the Mineral Leasing Act as appropriate for private relief legislation. We therefore respectfully request that the Subcommittee approve S. 1457 and recommend its enactment by the full Senate.

Thank you.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

REICHHOLD ENERGY CORPORATION,

Plaintiff,

vs.

CECIL D. ANDRUS, Secretary of the Interior,

Defendant.

Civil Action No. 79-1274

FILED

APR 3 0 1980

JAMES F. DAVEY, Clerk

MEMORANDUM OPINION

This matter is before us on cross-motions for summary judgment. Reichhold Energy Corp. (REC) seeks:

> a judgment declaring that the Secretary of the Interior wrongfully denied approval of an assignment of an oil and gas lease to REC and wrongfully declared that lease terminated by operation of law [and] . . . a mandatory injunction directing the Secretary of the Interior to reinstate said lease and approve said assignment.

Complaint ¶ 1. Neither party has raised nor have we found any genuine issues of material fact. The case being appropriate for summary judgment we grant the defendant's motion for the following reasons.

I. Statement of Facts

Plaintiff REC is a wholly-owned subsidiary of Reichhold Chemicals, Inc. (RCI) and is engaged in the discovery and production of natural gas in the Pacific Northwest. Defendant Secretary of the Interior Cecil D. Andrus has statutory authority to supervise the Bureau of Land Management (BLM), 43 U.S.C. §§ 1451, 1457, 1731; Reorg. Plan No. 3 of 1950, reprinted in 5 U.S.C. app., at 742 (1976), and to issue and administer oil and gas leases on public lands, including the authority to prescribe necessary and proper rules and regulations. Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 et seq.



BEST COPY AVAILABLE

Effective October 1, 1975, Fay A. Reuth received Federal Oil and Gas Lease OR 13713 for lands located in Columbia County, Oregon. REC holds a number of other leases contiguous or proximate to OR 13713, the leasehold at issue. Previously, on September 22, 1975, REC and Ms. Reuth entered into an agreement by which lease OR 13713 was purportedly assigned to REC. Almost six months later, on March 15, 1976, REC filed a BLM form 3106-5 (February, 1971), "Assignment Affecting Record Title to Oil and Gas Lease," and an affidavit purporting to set forth REC's qualifications as a lessor with the BLM Oregon State Office.

Prior to the issuance of lease OR 13713 effective October 1, 1975, BLM had requested information from Ms. Reuth and the other applicants about certain aspects of development of the leases. On September 11, 1975, Ms. Reuth responded, stating, inter alia, that:

> According to my information, Reichhold Energy Corporation of Tacoma, Washington is currently active in the area of my lease, and I plan to work in conjunction with them in the development of this lease after it is issued to me.
>
> . . .
>
> If you desire more specific or additional information regarding plans on or near my lease, I would suggest that you contact Reichhold Energy Corporation.

Letter from Fay Reuth to E. J. Petersen, Acting State Director, BLM (Sept. 11, 1975). After filing the purported assignment on March 15, 1976, REC determined that part of Reuth's lease OR 13713 was unlikely to be productive. Therefore, on September 27, 1976, REC filed a relinguishment of its interest in part of the land in lease OR 13713. REC also submitted a $633.45 check for the October 1, 1976, annual rental of the remaining land. On September 28, 1976, BLM received REC's submissions.

Prior to REC's actions, BLM had mailed a notice to Ms. Reuth that the annual rental of $913.50 was due on October 1, 1976. The notice specifically stated "[i]f the correct amount is not paid on or before the due date, the lease or contract may terminate automatically by law." BLM regularly cashes all checks for accounting purposes and to preserve the rights of the person who drew the check. After receiving REC's submissions



85-691 O—81——4

BEST COPY AVAILABLE

on September 28, 1975, BLM cashed REC's check. On October 14, 1976, BLM issued a receipt for REC's payment to Ms. Reuth, not REC, with a notation "Underpayment of $280.05 unless other action is pending or the balance due is paid by the due date this lease may be terminated."[1/] The $280.05 was the rental for the portion of the lease that REC sought to relinquish. Neither Reuth nor REC responded to the notation.

REC did not receive any communications from BLM in regards to lease OR 13713 until BLM's May 16, 1977 decision,[2/] some 14 months after the purported assignment of March 15, 1976, was sent to REC and Ms. Reuth, which notified REC and Ms. Reuth that the assignment was incomplete. REC had failed to provide the address of its 100% stockholder RCI, a statement from RCI concerning its lease holdings, and certain information from RCI as to RCI's stockholders pursuant to 43 C.F.R. § 3102.4-1.

BLM asserted that it could not approve the assignment because the assignment was incomplete and, therefore, the assignor, Ms. Reuth remained the record title holder responsible for the obligations under the lease. The partial relinquishment of the lease was ineffective, because it was not signed by Ms. Reuth the title record holder, but by REC, which would have been the title record holder only if the assignment had been complete and approved. Because the partial relinquishment was ineffective, the entire rent of $913.50 had been due on or before October 1, 1976. The payment by REC was not sufficient and, consequently, the lease was terminated in its entirety at the end of the due date as BLM had warned on the receipt. Once the lease terminated assignment became impossible and, therefore, BLM denied the attempted assignment without leave to correct the deficiencies.

In June, 1977 REC availed itself of its right to appeal to the Interior Board of Land Appeals (IBLA). On March 29, 1979, the IBLA affirmed the decision of the BLM Oregon State Office.

---

1/ The defendant's "CASE FILE COPY" of the October 14, 1976 notice to Ms. Reuth contained an ink notation, "Partial relinquishment 1266.90 Acres retained." We have seen no evidence that the notation was on Ms. Reuth's copy, but in the light of our analysis the question is not determinative.

2/ The BLM office had received a large number of applications for geothermal leases. The geothermal leases were handled on a priority basis, while plaintiff's attempted assignment and other oil and gas lease matters were held for later. Plaintiff received the same treatment as other applicant for assignments of oil and gas leases during that time frame.

BEST COPY AVAILABLE

II. Discussion

In general, plaintiff contends that its admitted omissions from the assignment were trivial, were matters of public record in RCI's filings with the Securities and Exchange Commission, and would have been quickly corrected, if only BLM had processed the assignment before the rental due date of October 1, 1976 rather than delaying for fourteen months. Plaintiff argues that the delay deprived plaintiff of notice and prevented REC from curing the minor deficiencies. Thus, plaintiff seeks to shift the blame for the results of its repeated carelessness in its two filings to the government.[3/] Counsel for plaintiff have proposed several theories to rescue REC.

A. The Mineral Leasing Act and the Secretary's Discretion

First, plaintiff argues that the denial of the assignment was arbitrary, capricious, and an abuse of discretion, because the omissons were trivial and easily remedied. Allegedly, all of the missing information about REC and RCI was available to the BLM in the public files of the SEC.[4/] Therefore, plaintiff contends that the Secretary abused his discretion by his "wooden" application of the filing requirements for the assignment.

The Secretary of Interior, however, has broad discretion; accordingly, his decisions will remain undisturbed unless he is "clearly wrong." Safarik v. Udall, 304 F.2d 944, 950 (D.C.Cir.), cert. denied, 371 U.S. 901 (1962). The principles underlying the leasing of potentially valuable federal mineral interests differ from those governing the sale of federal land:

> Unlike a land patent, which divests the Government of title, Congress under the Mineral Leasing Act has not only reserved

3/ Defendant did not assert plaintiff's further error in not complying with 43 C.F.R. § 3106.3-1 which provides:

> To obtain approval of a transfer affecting the record title of an oil and gas lease, a request for such approval must be made, within 90 days from the date of the execution of the assignment by the parties.

Plaintiff waited almost six months to file for approval, although that delay does not appear to have made matters worse.

4/ We agree with the defendant that it would be ludicrous to require the local branch office of BLM in Oregon to undertake the burden to check with the SEC about whether the latter agency had similar information buried in its files. As discussed below, the applicant bears the burden to provide a complete application.



BEST COPY AVAILABLE

> to the United States the fee interest in the leased land, but has also subjected the lease to exacting restrictions and continuing supervision by the Secretary. (emphasis supplied).

Boesche v. Udall, 373 U.S. 472, 477-78 (1963). Consequently, the Secretary and BLM have set strict standards for applicants in order to "provide certainty and fairness among competing participants in the federal minerals leasing program."[5/] Defendant's Supporting Memorandum at 5.

The Mineral Leasing Act provides that "[t]he Secretary shall disapprove the assignment or sublease only for lack of qualification of the assignee or sublessee or for lack of sufficient bond . . . ." 30 U.S.C. § 187a (1976). An assignee must meet the same qualifications that the assignor had to meet as a lessee. Id.; 43 C.F.R. § 3106.1-1. Consequently, the Secretary will not approve an assignment until the application proving qualification is complete. 43 C.F.R. § 3106.1-2. Among the limitations that Congress imposed on applicants for oil and gas leases is a maximum acreage limit. See 30 U.S.C. § 184(d)(1)(1976) (implemented for corporate applicants in 43 C.F.R. § 3102.4-1).

Apparently due to inadvertence, REC filed its papers for the assignment without providing:

> the address of its 100% stockholder and failed to furnish a statement from the parent company as to its holdings, as required by 43 C.F.R. 3102.4-1. In addition, the assignee's owner should have furnished the showings and statements required by 43 C.F.R. 3102.4-1 as to the stockholders of Reichhold Chemicals, Inc.

Letter from Harold A. Berends, Chief, BLM Operations, Oregon State Office,

---

5/ Accordingly, a commentator has noted recently that:

> Procedural requirements are policed closely. Applications have been rejected for omitting the name of the state in which the parcel of land is located (Eleanor R. Neuberger, 29 IBLA 168 (1977)), for otherwise neglecting to designate the plot fully (E. Fenton Carey, 29 IBLA 196 (1977)), and for failure to include the date of signing. E.g., Earl Thompson, 29 IBLA 218 (1977). A defective application may not be cured by a subsequent filing of information after the drawing [to determine which of several applicants will be awarded a lease for land for which a prior lease has been relinquished, terminated, canceled, or has expired.] Grady Argenbright, 27 IBLA 24 (1976). See also John R. Mimich, et al., 25 IBLA 67 (1976).

W. Rodgers, Energy and Natural Resources Law 654 n.b (1979). See Burglin v. Morton, 527 F.2d 486, 489-90 (9th Cir. 1975), cert. denied, 425 U.S. 973 (1976).



BEST COPY AVAILABLE

to Fay A. Routh and REC (May 16, 1977) (notice that lease had been terminated by the operation of law and the assignment denied). Thus, plaintiff failed to prove that it met the qualifications for an assignee. Compliance with the regulations regarding applications is the responsibility of the applicant. See Burglin v. Morton, supra.

If REC had filed a complete application proving its qualifications as an assignee, then the assignment would have taken effect on April 1, 1976, "the first day of the lease month following the date of filing . . . ." 30 U.S.C. § 187a. Mr. Berend's letter of May 16, 1977 was REC's first notice of its mistake, which if immediately corrected then could have effectuated the assignment as of June 1, 1977. REC, however, could not cure its mistake because BLM found that the lease already had been terminated by the operation of law.

Lease OR 13713 terminated because of another careless error by plaintiff. The Mineral Leasing Act provides that a lessee may make a written relinquishment, effective as of the date of filing, of all or part of its rights under the lease in order to avoid the obligations of the lease. 30 U.S.C. § 187b. The "lessee" is the "record title holder." See 43 C.F.R. § 3108.1. An assignee of a lease such as REC does not become the lessee or record title holder, however, until after the Secretary approves the assignment. 30 U.S.C. § 187a. Only after the Secretary's approval does the assignee become the lessee effective the first day of the lease month following the filing of the assignment. Id. Pending approval, the statute expressly provides that the assignor shall continue to be responsible for meeting the obligations of the lease, id., and, consequently, the assignor remains the record title holder until the assignment is approved.

In spite of the express procedure in the statute, REC filed a "relinquishment" of part of OR 13713 and presumed to submit the reduced rental payment for the remainder. As a result, REC joined the ranks of other persons who have suffered from their failure to follow this clear mandate of the Mineral Leasing Act. See Champlin Oil and Refining Company, 66 I.D. 26 (1959); Lester C. Hotchkiss, A-27342 (August 14, 1956);



BEST COPY AVAILABLE

Vivien James, A-26208 (June 29, 1951). REC had "no reason to assume that [the assignment] had been approved and that a relinquishment filed by the assignee . . . would serve to terminate [part of] the lease." Hotchkiss, supra, at 3. The proper procedure would have been to have had Ms. Reuth, the lessee, sign the relinquishment pending approval of the assignment. See James F. S. Holmberg, 67 I.D. 302 (1960). Her relinquishment would have been effective immediately, as discussed above,[6/] but without a relinquishment by the lessee, the entire rental was due on or before October 1, 1976, the anniversary date of the lease. See 30 U.S.C. § 226(d). Congress provided in the Mineral Leasing Act that a lease will terminate by the operation of law, not depending on the discretion of the Secretary, when the rental payment is not timely. 30 U.S.C. § 188(b).

In summary respecting the plaintiff's first argument, the Secretary did not abuse his discretion in regard to the termination because he had none; the lease terminated by operation of law. Furthermore, he did not abuse his discretion by refusing to approve an assignment that was incomplete. The Mineral Leasing Act of 1920 does not provide the Secretary with the discretion to approve a lease for an unqualified applicant, see Udall v. Tallman, 380 U.S. 1, 4 (1965), and the same standard apply to an unqualified assignee. We show great deference to the construction application of the Mineral Leasing Act of 1920 by the Secretary of Interior, who is charged with its administration. See Udall v. Tallman, supra, at 16; Duesing v. Udall, 350 F.2d 748, 751 (D.C.Cir. 1965), cert. denied 383 U.S. 912 (1966).

B. BLM's Delay

Second, plaintiff contends that BLM's delay in processing the assignment and relinquishment denied plaintiff's rights under the Mineral Leasing Act, deprived REC of notice in violation of Fifth Amendment due process, and violated REC's rights under the Administrative Procedure Act.

6/ Even though Reuth remained responsible for the rental pending approval of the assignment, REC could have paid the entire rental to protect the lease pending the approval of the assignment, which was the necessary prerequisite to their "relinquishment" of part of the lease.



BEST COPY AVAILABLE

Plaintiff's fundamental error is in assuming--eagerness to assume having a fundamental flaw in plaintiff's conduct of its affairs--that "BLM's Inexcusable Delay was the Direct Cause of Any Procedural Discrepancies by REC." Plaintiff's Memorandum in Support of Motion for Summary Judgment at 8. Rather the direct cause of plaintiff's problems was its own repeated carelessness and assumption that everything it wanted would happen. Plaintiff would not be here today if it (1) had filed a complete assignment or (2) had had Ms. Reuth sign the relinquishment, which would have been effective immediately without the alleged "Catch 22" or (3) had paid the $280.05 rental rather than assuming that the BLM would approve the assignment and relinquishment or (4) had gotten a written power of attorney from Ms. Reuth. Thus, by no stretch of the imagination did BLM "cause" plaintiff's problems and "[t]here is no requirement that the land office notify one who wishes approval of an assignment of the papers needed to complete an applicaton for such approval." Joe T. Juhan, A-28667 at 5 (May 17, 1962), accord, Burglin v. Morton, supra, at 490. Neither inadvertent failure to comply with the law nor ignorance of the law excuse plaintiff's errors.

In particular, plaintiff contends that BLM's delay denied plaintiff the opportunity to seek reinstatement within 20 days of the rental due date pursuant to 30 U.S.C. § 188(c). In 1970 Congress enacted § 188(c) as a limited exception to the harsh rule that leases terminated automatically by operation of law when the rent is not paid timely. The exception, however, applies only when the full rental has been paid or tendered within twenty days of the due date.[7/] Both the statute, §§ 188(b), (c), 226(d), and the regulations, 43 C.F.R. § 3108.2-1, provide adequate notice, as does the lease itself, § 2(d), that a lease will be terminated if the full rental is not paid timely. Indeed, as quoted above,

---

7/ The legislative history indicates that the 20 day reinstatement exception was intended to be narrow and ends with the observation that "[i]n the event truly deserving cases arise that cannot meet the 20-day provision recourse to private relief legislation may be necessary." H.R.Rep. No. 91-1005, 91st Cong., 2d Ses.. 5, reprinted in [1970] U.S.Code Cong. & Ad. News 3002, 3005. As defendants suggest, this may be plaintiff's situation.



BEST COPY AVAILABLE

the notice that the payment is coming due includes a warning. In addition, to implement § 188(c), the Secretary will send a "Notice of Termination of Lease due to late payment of rental" to lessees who have paid or tendered within the 20 day period. See 43 C.F.R. § 3108.2-1(c)(1). As plaintiff concedes, this notice provision does not apply to REC's partial payment. We conclude that plaintiff had no statutory right pursuant to the Mineral Leasing Act to further notice that the rental payment for Lease OR 13713 was due in full.

Plaintiff asserts that the constitutional mandate of due process required notice to REC and Reuth that they would be adversely affected. We have held that they received all of the advance notice that they were entitled to pursuant to the Mineral Leasing Act. Upon receipt of Mr. Berends' notice of May 16, 1977, plaintiff appealed within the agency and to this court. The plaintiff in this case was not denied its right to appeal, so that the case of Brandt v. Hickel, 427 F.2d 53 (9th Cir. 1970) is distinguishable. We find no violation of plaintiff's right to due process.

Likewise, we reject plaintiff's argument that various sections of the Administrative Procedure Act, 5 U.S.C. § 551, et seq., were violated by BLM's delay. To the extent the provisions relied on by the plaintiff might apply, they establish a standard of reasonableness. See 5 U.S.C. §§ 555(b), 558(c), 706(1). We need not determine which sections apply because we find BLM's delay to be reasonable under the circumstances. The local BLM office had accorded a higher priority to the processing of applications for new geothermal leases. As we noted above, the statutes and regulations are so written that an assignment becomes effective retroactively to protect the assignee against delay and the assignor remains liable for the obligations of the lease to protect him against delay. BLM was not required to foresee plaintiff's series of errors.

C. Agency and Estoppel

In the alternative, plaintiff argues that if its actions were inadequate in themselves, then the Secretary should have found that REC was Reuth's agent and, consequently, the partial relinquishment would

BEST COPY AVAILABLE

have been valid. The September 11, 1975 letter from Ms. Reuth did not, however, state that REC was her agent. Rather, the letter referred to her future inclination and made a suggestion to contact plaintiff. The Department of the Interior requires that an agent be clearly authorized on the record. See Mary C. Hagood, A-27716 (Nov. 6, 1958). Although plaintiff contends that only REC dealt with BLM and mailed a REC check for the rent, we note that BLM obviously did not recognize an agency relationship because it sent both the notice of the annual rental and the receipt for the partial rental directly to Ms. Reuth. Consequently, we reject plaintiff's agency argument.

Finally, plaintiff contends that we must hold that defendant is estopped from denying the validity of the assignment and relinquishment. First, plaintiff asserts that REC relied to its detriment on the assumed validity of the assignment because of BLM's lengthy delay in denying the assignment. Although the Department of Interior may estop itself to deny retroactive effect to its decisions when to do otherwise would adversely affect the actions taken and rights acquired by persons in reliance on an earlier decision of the Department, see Safarik v. Udall, 304 F.2d 944, 949 (D.C.Cir.), cert. denied, 371 U.S. 901 (1962), such does not authorize applicants to presume to rely on BLM's inaction or failure to deny an application. See Hotchkiss, supra, at 3.

As a second ground for estoppel, plaintiff asserts that it was affirmatively misled by the fact that BLM cashed REC's check for the partial payment and sent a receipt to Ms. Reuth with the notation "Underpayment of $280.05 unless other action is pending or the balance due is paid by the due date this lease may be terminated." We find that neither Brandt v. Hickel, supra, which plaintiff relies on, nor Burglin v. Morton, supra, which defendant relies on, control. In the former, the Secretary was estopped by a BLM decision, 427 F.2d at 57, whereas here we have a receipt with a warning, but not a decision. In the latter case, the court set a higher threshold to estop the rejection of an offer for a lease, 527 F.2d at 490, whereas here an existing lease was at issue.



BEST COPY AVAILABLE

85-691 O—81——5

We hold that BLM did not "directly misle[a]d REC into believing that its relinquishment and partial payment were effective." Plaintiff's Opposition at 4 (emphasis supplied). The burden to pay the rental timely and in full is on the lessee, who can inquire about what is pending and what needs to be done to protect the lessee's rights or can gamble on the assumption that everything is in order. If plaintiff was misled, it was misled by its own assumptions, not by any affirmative action or decision by the defendant.

CONCLUSION

In summary, plaintiff made a series of mistakes in a business that has exacting requirements and as a consequence plaintiff has been penalized. We will not permit the plaintiff to shift the blame for its troubles to the Secretary of Interior.

An order consistent with the foregoing has been entered this day.

John H. Pratt
United States District Judge

April 29th, 1980.



BEST COPY AVAILABLE

Senator JACKSON. Tell us what happened specifically.

Mr. STENSRUD. The direct cause of the termination was an underpayment of some $280 in rent.

Senator JACKSON. Out of how much?

Mr. STENSRUD. The exact rental must have been around $1,000.

Senator JACKSON. You were $280 short?

Mr. STENSRUD. We thought we had relinquished part of the lease and in fact due to a technicality we had not complied.

Senator JACKSON. You made a payment on time?

Mr. STENSRUD. Yes.

Senator JACKSON. In the judgment of BLM, you did not make an adequate payment?

Mr. STENSRUD. That is correct. It was inadvertent.

Senator WARNER. We thank you very much.

Mr. Russell, we will insert your statement into the record.

**STATEMENT OF DAVID C. RUSSELL, DEPUTY ASSISTANT SECRETARY, LAND AND WATER RESOURCES, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY DALE ZIMMERMAN, ASSISTANT TO THE DIRECTOR, BUREAU OF LAND MANAGEMENT**

Mr. RUSSELL. Mr. Chairman and Senator Jackson, good morning. I appreciate the opportunity to present the views of the Department of the Interior on these five oil and gas lease reinstatement bills.

With me is Mr. Dale Zimmerman, Assistant to the Director of the Bureau of Land Management and a nationally recognized expert in oil and gas leasing.

S. 383, S. 466, S. 651, S. 1457 and S. 1605 have a common thread, other than the fact they are all obviously bills to reinstate terminated or expired Federal oil and gas leases.

The common thread is the time and money expended to move this private relief legislation. Having been both on congressional staff and downtown, Mr. Chairman, I have endured perhaps more than some the considerable effort required to fix problems which should not in my judgment be necessary to elevate to the Congress.

Lease reinstatement bills are apparent before nearly every Congress as Senator Jackson has mentioned. In the 96th Congress, a brief review indicated that six reinstatement bills covering 28 leases were considered.

We are today reviewing another five bills. The vast majority of these bills are noncontroversial, mechanical fixes. A few generic examples; a company actually drilling on a Federal lease already having spent over a million dollars receives an expiration notice from the Bureau of Land Management for not having timely paid the annual rental of $600. Another example; leasee transfers lease ownership to another company and this new leasee pays the rental only to have the check returned and a termination notice served on the original leasee because the lease assignment papers were not recorded at the time the rent was due.

A third example, a company arranging for a drill rig to be moved to the lease site receives an expiration notice because BLM's computer did not send out rental billings until after rent was due.

Mr. Chairman, the fact that you have so many of these bills before you indicates that the law and regulations governing these situations are not particularly well crafted or that the law and rules in their deficiency may favor those with better political access and attorneys to reinstate the leases through private relief legislation.

To correct this problem which is essentially one of a lack of flexibility in the statute and the rules, we are preparing draft rule changes and amendments to the Mineral Leasing Act as amended, specifically 30 United States Code 188 which deals with forfeiture, cancellation or reinstatement of leases, which would eliminate the time consuming and expensive process we find ourselves in the midst of today.

We would be happy to work with the committee to further develop appropriate language for amendment.

Even under these proposed changes, the Congress will continue to be final arbitrator of the more major and controversial reinstatement actions such as S. 506, the Pauley group bill.

S. 383 along with S. 466 and S. 651 reflect problems resulting in lease expiration due to failure to pay rental in the first year after the primary lease term. In all three instances, drilling was proceeding when expiration notices were received.

We do not object to enactment of these bills. The Bureau of Land Management and the Department have traditionally opposed lease reinstatements. The position was the law had not been complied with so no restitution was deserved.

We believe that reinstatement in these and many other cases may be justified on equity grounds. While we are not actively pushing these reinstatement bills, we do not object to their enactment.

S. 383 would reinstate a Tenneco lease in North Dakota. The lease expired because Tenneco paid the $1,300 rental 2½ months late, too late for the Secretary to reinstate the lease under authority given to him in the Mineral Leasing Act. At the time of the lease expiration, Tenneco had invested $1.7 million in drilling expenses.

BLM and Tenneco have contracted to permit continued drilling pending resolution of the status of the lease.

The problem occurred because BLM does not bill for rental in the 11th year since the primary term of a noncompetitive lease is 10 years. Drilling extends the lease term. Since no rental bill was sent, Tenneco slipped in its rental payment.

S. 466 would reinstate an Amoco lease in North Dakota. It is generally the same situation as the Tenneco lease but no contract has been executed for continued drilling between BLM and Amoco. Amoco shut in the well at 1,100 feet after expending $1.2 million and receiving an expiration notice for failure to pay $617 in rent.

S. 651 sponsored by Senator Wallop and Senator Simpson would reinstate an Integrity Oil & Gas Co. lease in Wyoming. Again, failure to pay rent on time and the lease expired by its own terms.

The leasee in this case was erroneously notified by BLM officials that the rental had actually been paid. By the time the mistake was discovered, production had already begun. To complicate the

matter, the U.S. Geological Survey informed us by memorandum that:

> It is our considered opinion that production should be maintained from this well to avoid the strong possibility that the frontier formation could be damaged to the extent that the well's present oil producing capability could be significantly diminished or completely lost.

BLM entered into a production contract with Integrity to prevent losing production capability.

In this case the equity for reinstatement is particularly visible.

S. 1457 would reinstate a lease to Fay Reuth and Reichhold Energy Corp. in Oregon. Due to an unintentional mix up in paperwork required for lease assignment from Reuth to Reichhold Energy, the BLM terminated the lease because only two-thirds of the rental was paid.

Senator WARNER. I would ask at this time that counsel for the minority state for the record some legislative history and ask you to comment.

Mr. HARVEY. Thank you, Mr. Chairman.

The legislative history of this whole provision is interesting. Prior to 1954 when anyone got an oil and gas lease from the Federal Government, they contracted in effect to pay rent for 10 years or 5 years depending on the term. The industry found they did not like that provision in these instances when they got a lease and subsequently decided because of exploration activities or other reasons they did not want to keep the lease. They could surrender the lease to the Federal Government but they were still obliged to pay the rent for the full term. The end result sometimes was that a company did not want to explore and simply kept the lease and another company which might have had a chance to explore did not have that chance because the first one had the lease.

Congress changed the law in 1954 to allow the companies to get out from under their obligation by not paying the rental. The assumption was they would do this intentionally and the lease would terminate but their obligation to pay further rent would also terminate.

What happened subsequent to that time was in addition to the intentional nonpayment of rental, we got into a situation where there was unintentional nonpayment or late payment.

In 1962, Congress passed an act giving relief to lessees if their lease terminated between 1954 and 1962. At that time Congress expressly refused to apply that authority prospectively. After looking at legislation for two Congresses, in 1967–68 and finally 1969–70, the Congress did agree to the change that is now the law.

At that time Harrison Loesch who was subsequently minority counsel of this committee and myself were the Department witnesses before both the House and Senate and as I recall we were advocating legislation that was somewhat more liberal than what the Congress finally adopted.

Congress was very leery at that time of allowing people to in effect fail to pay their rent, meet their obligation and then if they thought they really wanted the lease, come in and get the lease back.

That is why you have the very stringent provisions on reinstatement under the general law that end up with this committee and

the Congress having to face the kind of bills we have before us today.

Senator WARNER. I think it is important that the legislative history be taken into consideration when recommending a legislative proposal. Is that consistent with your colleagues' views?

Mr. HARVEY. The record will show Mr. Zimmerman is even older than I am.

Mr. ZIMMERMAN. We go back a long way. As Mike has stated, that is the history of this problem with reinstatement. Basically the 1954 act was intended to keep people from getting into situations where they had a debt owing to the United States and did not want to retain the lease. The only way they could keep that lease from continuing was to actually relinquish the lease. They had to file a relinquishment with the Bureau of Land Management to stop the running of it.

There has been one argument that seems to persist over the years for being rather leery to give this kind of discretion to the Secretary to reinstate. If we allow a lease to continue beyond its primary term, after the 10th year or the 5th year, people will drill. If they have a dry hole they will walk away from it and they will not pay the rent.

I think that is rather ridiculous after they have paid that kind of money that they would not pay another $600 in rent.

That has been one of the arguments that has been raised, maybe they would not pay that rent before we would notify them.

What we are thinking about is to allow this drilling to extend the leases and then bill the individual for the rent, after the Geological Survey has notified the Bureau of Land Management that in fact the lease has been extended by reason of drilling. Then we would bill them for the rent.

As in the case of Integrity where they got production; if you get production in that 11th year, you are excused from the rent. After you pay it up front you get credit for it when you pay your royalties.

Senator WARNER. Let's see if we can get this cleared up so Congress is not required to take special action.

Mr. Russell, are you in agreement with the bills and do you support them as written? Are there any technical changes required?

Mr. RUSSELL. We have no objection to enactment of any of these bills. We do suggest several wording changes to S. 383, S. 466, and S. 651. We feel the extension provision is faulty as currently drafted. We have brought language with us to correct it.

Senator WARNER. We will insert your changes into the record at this point.

[The changes referred to follow:]

Suggested language to amend S. 383, S. 466 and S. 651 to provide a definite and easily determinable duration for lease extensions that would be granted by the bills. These are the bills addressing those cases where the lessees had commenced drilling at the end of their lease terms and were diligently prosecuting that drilling but failed to pay the rental for the carryover period on the anniversary date of the year in which they were drilling.

Suggest that each bill be amended as follows:

Delete the words between "terms of said lease extended for" (page 1, line 9, in each bill but S. 651, where they appear in line 8) and "and so long thereafter as oil and gas is produced in paying quantities" on page 2 of each bill. Substitute there-

fore the words "two years from the date on which the lessee received notice that the lease expired for non-payment of rent."

In S. 651 an entire line was apparently omitted inadvertently when the bill was printed. The words "of law or otherwise on August 31, 1979, but shall be deemed" should be inserted between the words "operation" and "in full force" at page 1, line 7.

Senator WARNER. How soon might we expect a revision so we can obviate this type of situation again?

Mr. RUSSELL. We have draft rules within the Department. Those rules will not correct some of the problems we have. Several issues will have to be brought before this committee.

Senator WARNER. You will expedite that?

Mr. RUSSELL. Yes, sir.

Senator WARNER. Do you wish to continue?

Mr. RUSSELL. I will finish up with the discussion of S. 1457, the Reichhold Energy Corp. I was noting there was no production from the leasehold itself but Reichhold has expended considerable amounts of money, $1.2 million on surrounding holdings and views the lease vital to achieving optimum production in the area.

We believe reinstatement in this case is justified on equity grounds.

S. 1605 would reinstate a Tenneco lease in Florida. Tenneco is the assignee of a 10-year lease originally leased to another party and assigned first to yet another party.

Rental for the first year was paid but not for the second. No billing was sent as is customary by BLM's Eastern States office. The failure to pay rent by Tenneco was apparently inadvertent. Tenneco has invested heavily in the area and has a healthy interest in expeditious development of the leases. Reinstatement of the lease would be in the national interest in our opinion.

Mr. Chairman, to comment on counsel's legislative history, we feel it is particularly important the Congress not be burdened by a number of these very mechanical fixes that are needed in the way of lease reinstatement.

On the other hand we are very sensitive to the concerns that were brought up in the legislative history over the years. That is the Interior Department pay due regard for the great amounts of money involved and not be subject to pressures from individual companies on lease reinstatement.

We would hope to work with the committee in drafting language that would protect the public interest and yet keep you from being tied up with these mundane issues.

That concludes my statement. I would be happy to answer any questions.

[The prepared statements of Mr. Russell follow:]

SEP 17 1981

STATEMENT OF DAVID C. RUSSELL, DEPUTY ASSISTANT SECRETARY, LAND AND WATER RESOURCES, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES, COMMITTEE ON ENERGY AND NATURAL RESOURCES, UNITED STATES SENATE, ON S. 383, A BILL "TO PROVIDE FOR THE REINSTATEMENT AND VALIDATION OF UNITED STATES OIL AND GAS LEASE NUMBERED M-16402(ND) acq."

I appreciate the opportunity to present the views of the Department of the Interior on S. 383, which would reinstate and validate an oil and gas lease of Tenneco Oil Company covering land in Billings County, North Dakota.

We would not object to enactment of S. 383 if the Congress finds that the circumstances of Tenneco's failure to meet regulatory requirements warrant the special relief that would be granted by the bill.

Tenneco was the holder of a ten-year lease which by its terms expired on September 30, 1980, for failure to pay the eleventh year's rent. The Mineral Leasing Act provides for an extension of two years when there is drilling prior to the end of the initial term of the lease and diligently prosecuted thereafter. If there is to be such an extension, the rental must be paid on the anniversary date or the lease expires. Tenneco began drilling operations before the expiration date of its lease. If Tenneco had paid the rental on time the lease would have been extended. However, it failed to pay the rental on time, and its lease expired by its own terms. The rental was tendered on December 12, 1980 - too late for the Secretary to reinstate the lease under authority given him in the Mineral Leasing Act.

BLM has followed the long-established procedure of sending out courtesy billings some two months in advance of the anniversary date. This courtesy

billing is provided for four years in the case of a competitive lease that runs its full primary term as was the case here. However, BLM does not bill for the sixth or seventh year's rent when a lessee attempts to extend the lease by drilling.

By the time the Bureau of Land Management issued its decision that the lease had terminated, Tenneco had spent over $1.7 million in drilling on its assigned interest in the leasehold. Drilling began on September 22, 1980, but no well capable of production in paying quantities was achieved by the time the primary lease term expired. However, the Bureau of Land Mangement and Tenneco have contracted to permit continued drilling pending resolution of the status of the lease.

This contract was authorized by the Assistant Secretary of the Interior for Land and Water Resources on August 6, 1981.

The Tenneco lease expired at the end of the primary term. Tenneco was so advised in a notice from the Bureau of Land Management dated March 9, 1981. Tenneco has appealed this action to the Interior Board of Land Appeals. No decision has yet been handed down.

Although the Mineral Leasing Act does not provide for lease reinstatement in situations such as this, we believe that reinstatement in this case may be justifiable on equity grounds. Considerable funds have been expended on development on the leasehold. Tenneco has developed unique capabilities in drilling the well. No other contractor would be able to step in and have as great a potential for

production. Under BLM's contract with Tenneco, any receipts will be placed in escrow pending legislation in order to continue drilling. All of this reflects a keen interest on Tenneco's part in developing the minerals expeditiously. This is in the national interest.

We find that the language of the bill is unnecessarily complex and may not accomplish the desired purpose. We suggest that it be amended to provide for reinstatement of the lease for a period of two years from the date the lessee received notice from BLM that the lease expired, and for so long thereafter as production continues and all other terms of the lease are met.

We will be happy to work with the Committee in developing appropriate language of amendment.

We are also considering administrative adjustments that should help remedy this kind of situation generally.

This concludes my statement. I will be happy to answer questions.

STATEMENT OF DAVID C. RUSSELL, DEPUTY ASSISTANT SECRETARY, LAND AND WATER RESOURCES, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES, COMMITTEE ON ENERGY AND NATURAL RESOURCES, UNITED STATES SENATE, ON S. 466, A BILL "TO PROVIDE FOR THE REINSTATEMENT AND VALIDATION OF UNITED STATES OIL AND GAS LEASE NUMBERED M-15450 (ND)."

I appreciate the opportunity to present the views of the Department of the Interior on S. 466, which would reinstate and validate an oil and gas lease of Amoco Production Company covering land in McKenzie County, North Dakota.

We have no objection to enactment of S. 466 if the Congress finds that the facts of the case warrant the special relief that would be granted by the bill.

Amoco was the holder of a ten year lease which by its terms expired on June 30, 1980, for failure to pay the eleventh year's rent. The Mineral Leasing Act provides for an extension of two years when drilling is commenced prior to the end of the primary term of the lease and diligently prosecuted thereafter. If there is to be such an extension, rental must be paid on the anniversary date, that is, the beginning of the eleventh lease year, or the lease expires. Drilling operations were begun by Amoco before the expiration date of its original lease. If Amoco had paid the rental on time the lease would have been extended. However, it failed to pay rental on time, and its lease expired by its own terms. Rental was paid early in October -- too late for the Secretary to reinstate the lease under authority given him in the Mineral Leasing Act.

BLM has followed the long-established procedure of sending out courtesy billings approximately two months in advance of the anniversary date.

This courtesy billing is provided for nine years in the case of a non-competitive lease which runs its full primary term as was the case here. However, BLM does not bill for the eleventh or twelfth year's rent where a lessee attempts to extend the lease by drilling activities.

Amoco has stated that timely payment of rent was not made because of an administrative error. It has also advised us that from June 27 to October 1, 1980, along with its drilling partner it spent an estimated $1,278,651 on drilling and testing the leasehold. There is presently no production on the lease pending resolution of the status of the lease. However, a well to a depth of over 11,000 feet has been drilled and found to be productive from two formations.

The Amoco lease was declared terminated by operation of law by decision of the Bureau of Land Management dated October 24, 1980. Amoco has appealed this decision to the Interior Board of Land Appeals. No decision has yet been handed down.

Although the Mineral Leasing Act does not provide for the reinstatement of a lease in situations such as this, we feel that reinstatement may be justifiable on equity grounds. The failure to pay rental in a timely manner was inadvertent. A lessee incurring the considerable expense of drilling would not deliberately fail to pay any rental due. Considerable funds have been expended on development in the vicinity. This reflects a strong interest in developing the mineral expeditiously. This is in the national interest.

We find that the language of the bill is unnecessarily complex and may not accomplish the desired purpose. We would suggest that it be amended

to provide for reinstatement of the lease for a period of two years from the date the lessee received notice from the BLM that the lease expired, and for so long thereafter as production continues and all other terms of the lease are met. We will be happy to work with the Committee on developing appropriate language of amendment.

We are also considering administrative adjustments that should help remedy this kind of situation generally.

This concludes my statement. I will be happy to answer questions.

SEP 17 1981

STATEMENT OF DAVID C. RUSSELL, DEPUTY ASSISTANT SECRETARY, LAND AND WATER RESOURCES, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES, COMMITTEE ON ENERGY AND NATURAL RESOURCES, UNITED STATES SENATE, ON S. 651, A BILL "TO PROVIDE FOR THE REINSTATEMENT AND VALIDATION OF UNITED STATES OIL AND GAS LEASE NUMBERED W-46102."

I appreciate the opportunity to present the views of the Department of the Interior on S. 651, which would reinstate and validate an oil and gas lease of Integrity Oil and Gas Company and Rampart Resources, Incorporated, covering 117.99 acres in Natrona County, Wyoming.

We would not object to enactment of S. 651.

Integrity Oil and Gas and Rampart Resources (the lessees) were holders of a five year lease which by its terms expired on August 31, 1979, for failure to pay the sixth year's rent. The Mineral Leasing Act provides for an extension of two years when there is drilling prior to the end of the initial term of the lease and the drilling is diligently prosecuted thereafter. If there is to be ~~such~~ an extension, the rental must be paid on the anniversary date or the lease expires. The lessees began drilling operations on August 29, 1979, before the expiration date of their original lease. If the lessees had paid the rental on time the lease would have been extended. However, they failed to pay the rental on time, and the lease expired by its own terms.

BLM has followed the long-established procedure of sending out courtesy billings approximately two months in advance of the anniversary date. This courtesy billing is provided for four years in the case of a competitive lease that runs its full primary term as was the case here. However, BLM does not bill for the sixth or seventh year's rent when there is an attempt to extend the lease by drilling.

The lessees were erroneously notified by BLM officials in November, 1979, that the rental had actually been paid. The lessees continued drilling and opened a well producing 150 barrels of oil a day, and thereafter the lease was communitized with an adjoining Federal oil and gas lease several months after the lease expired. When the mistake was discovered, BLM notified the lessees in a notice dated June 3, 1980, that the lease was terminated. The lessees informally contested this determination, and requested that private legislation be introduced in Congress to reinstate the lease. They also asked the Department of the Interior to enter into an agreement with them to permit continued operation of the well, pending enactment of legislation. Receipts, less operating costs, are held in escrow. Such an agreement was executed on October 21, 1980, and further extended on May 1, 1981.

Although the Mineral Leasing Act does not provide for the reinstatement of leases in situations such as this, we feel that reinstatement in this case may be justifiable on equity grounds. The failure to pay rental in a timely manner was apparently inadvertent, and after November 1979 operations were continued without payment of rental in reliance on a Government assurance that it had been paid. A lessee incurring the considerable expense of drilling would not deliberately fail to pay any rental. Considerable funds have been spent on developing the leasehold, and production has been achieved. All of this demonstrates a keen interest in developing the mineral expeditiously. Further, a problem with water entry into the well bore dictates that producing operations continue without interruption. Discontinuing drilling would result in the loss or

severe reduction of hydrocarbon recovery because the well would be watered out. Reinstatement of the lease would be in the national interest.

We find that the language of the bill is unnecessarily complex and may not accomplish the desired purpose. We suggest that it be amended to provide for reinstatement of the lease for a period of two years from the date the lessee received notice from BLM that the lease expired, and for so long thereafter as production continues and all other terms of the lease are met. We will be happy to work with the Committee on developing appropriate language of amendment.

We are also considering administrative adjustments that should help remedy this kind of situation generally.

This concludes my statement. I will be happy to answer questions.

SEP 17 1981

STATEMENT OF DAVID C. RUSSELL, DEPUTY ASSISTANT SECRETARY, LAND AND WATER RESOURCES, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON ENERGY AND NATURAL RESOURCES, COMMITTEE ON ENERGY AND NATURAL RESOURCES, UNITED STATES SENATE, ON S. 1457, A BILL "TO REINSTATE UNITED STATES OIL AND GAS LEASE NUMBERED OR-13713."

I appreciate the opportunity to present the views of the Department of the Interior on S. 1457, which would reinstate and validate an oil and gas lease of Fay S. Reuth covering 1,826.90 areas in Columbia County, Oregon.

We would not object to enactment of S. 1457.

Fay S. Reuth was the holder of an oil and gas lease issued effective October 1, 1975. She attempted to assign the lease to Reichhold Energy Corporation in accordance with a September 22, 1975, agreement. On March 15, 1976, during the first year of the lease, Reichhold filed a request in the Oregon State Office of the Bureau of Land Management for approval of the assignment. Reichhold then explored the leasehold and determined that about one third of it would probably not be productive. The request for approval of the assignment was still pending on September 1, 1976, when Reichhold filed a relinquishment of those non-productive lands, without obtaining Reuth's signature on the relinquishment, and paid the rental due on the remainder of the leasehold before the October 1, 1976, deadline. In May, 1977, 14 months after filing the request for approval of the assignment, the Bureau of Land Management denied approval of the assignment because certain corporate information had not been supplied. This omission was a curable defect and could have been rectified by the applicant before the anniversary date of the lease, had Reichhold been aware of it.

The Bureau subsequently held the relinquishment of the land void because Reichhold, not being the record owner, lacked the authority to relinquish

the lease without Reuth's signature. Finally, the Bureau terminated the lease because the entire rental, including that for the unproductive land had not been paid on the lease anniversary. Because the effective termination date was more than 20 days before the rental payment was received, it was too late for for the Secretary to reinstate the lease under authority given him in the Mineral Leasing Act. In this case, the delay of the initial decision on the assignment, and the actions of the parties relying on the supposed valid assignment, set off a chain of events that ultimately led to termination of the lease and the lack of time to reinstate. Reichhold appealed the Bureau's decision and has exhausted all its administrative and judicial remedies.

There is no production on the leasehold itself, but Reichhold and its joint venture partners have extensively explored surrounding holdings and sunk a 5,805 foot test hole near the lease, resulting in a total investment in the area of about $1.5 million. Reichhold considers the lease vital to achieving the benefits of its exploration activities.

Although the Mineral Leasing Act does not provide for lease reinstatement in situations such as this, we believe that reinstatement in this case may be justifiable on equity grounds. Considerable funds have been spent on development, and the leasehold that would be reinstated is an important part of that development. Reichhold submitted its partial rental payment in a timely manner intending to comply fully with leasing requirements. The inadvertent defects in the reassignment application and in the relinquishment could have been remedied on time had Reichhold or Reuth been aware of them before the rental

payment deadline. Reichhold and its partners have been diligent in exploring the area of the lease for oil and gas. All of this reflects a strong interest in expeditious development of the minerals, which is in the national interest.

We are considering administrative adjustments that should help remedy this kind of situation.

This concludes my statement. I will be pleased to answer questions.

SEP 17 1981

STATEMENT OF DAVID C. RUSSELL, DEPUTY ASSISTANT SECRETARY, LAND AND WATER RESOURCES, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES, COMMITTEE ON ENERGY AND NATURAL RESOURCES, UNITED STATES SENATE, ON S. 1605, A BILL "TO PROVIDE FOR THE REINSTATEMENT AND VALIDATION OF UNITED STATES OIL AND GAS LEASE NUMBERED E.S. 20644."

I appreciate the opportunity to present the views of the Department of the Interior on S. 1605, which would reinstate and validate an oil and gas lease of Tenneco Oil, covering 2,107.53 acres in Santa Rosa County, Florida.

We would not object to enactment of S. 1605 if the Congress finds that the facts of the case warrant the special relief that the bill would grant.

Tenneco was the assignee of a ten year lease that was originally issued to Gordon Carew on June 29, 1979, and assigned to Hudson Dean on December 1, 1979. On March 24, 1980, Dean filed the assignment to Tenneco in the Eastern States Office of the Bureau of Land Management for approval. Approval came on July 22, 1980, designating April 1, 1980, as the effective date of the assignment.

However, the rental for the second year of the lease, due on July 1, 1980, was not paid. While the assignment was still pending Dean was legally responsible for paying the rent, although he believed that Tenneco was responsible. A possible contribution to the mix-up may have been the failure of the Eastern States Office to enter the lease into the billing system. As a result, a courtesy billing was not sent to the lessee, as is customarily done, or to the assignee. In any event, the rent was not paid, and has not been paid to date.

Although drilling has not taken place on the leasehold, Tenneco has been assigned leases covering adjacent land and more than two dozen 80-acre

parcels surrounding the leasehold, forming a substantial drilling block. One of the assignments has now been approved, and the other is still pending.

The United States has only a 75% mineral interest in the lands subject to this lease. The remaining 25% is owned by the State of Florida. Tenneco has acquired a lease from the State for the portion of the tract comprising the proposed drill site. Therefore, any development of the Federal lease would necessarily involve participation by Tenneco by virtue of the State lease, even if the Federal Lease is not reinstated.

Tenneco has spent $348,920.58 in acquiring the subject lease and nearby adjoining leases, and in exploration. Tenneco has assembled a substantial number of leases that would combine with the subject lease to form a prospectively valuable drilling block. This all demonstrates a healthy interest in expeditious development of the leases. The failure to pay the rent was apparently inadvertent, and possibly was caused by a failure to follow a customary procedure on the part of BLM. Reinstatement of the lease would therefore be in the national interest.

This concludes my statement. I will be happy to answer questions.

Senator WARNER. Mr. Russell, I thank you for your usual thorough and professional analysis of the problem and the willingness on your behalf to try to get this straightened out.

Would you kindly remain while we hear from the balance of our witnesses in case there are any questions?

Mr. RUSSELL. Yes, sir.

Senator WARNER. We will hear from Mr. Pierini for Amoco.

**STATEMENT OF WILLIAM J. PIERINI, AREA LANDMAN, NORTHERN DIVISION, DENVER REGIONAL OFFICE, AMOCO PRODUCTION CO.**

Mr. PIERINI. Mr. Chairman, I am William J. Pierini. I am an area landman in the northern division of the Denver regional office of Amoco Production Co.

I am here to testify in support of S. 466 which would reinstate M-15450. The lease which was issued on July 1, 1970, was for a primary term of 10 years and for longer as long as oil and gas is produced.

It is situated in McKenzie County, N. Dak., and called for an annual rental of $617.

On June 22, Amoco commenced drilling of a test and on July 1 the primary term for this lease did expire.

Senator WARNER. That is the historical problem and is going to be made part of the record. What technical changes are required in your opinion with S. 466.

Mr. RUSSELL. There is a technical change in S. 466 which deals with duration of lease extensions. It is quite technical. I can have Mr. Zimmerman explain it briefly.

Mr. ZIMMERMAN. The way the legislation is drafted, it is questionable whether there would be an extension really granted by the legislation. It says for the "unexpired primary term of the lease." It would be granted an extension for the unexpired term of the lease and so long thereafter as oil and gas is produced.

We are suggesting language something similar to an extension of 2 years from date of notice that the lease expired and then so long thereafter as oil and gas is produced in paying quantities. At that point in time they could no longer beneficiate their lease. They were told to stop and any activities after that would be technically in trespass.

It is so there is no question as to whether there was an extension granted if the legislation passed with the present language.

Senator WARNER. Are you prepared to address that?

Mr. PIERINI. Yes. I concur, Mr. Chairman.

Senator WARNER. That would be acceptable?

Mr. PIERINI. Yes, sir. I think his position is well taken. I think the suggested amendment is very appropriate and we concur.

Senator WARNER. The matter is settled. Do you have anything further to say?

Mr. PIERINI. No, sir.

Senator WARNER. A technical amendment will be needed. Mr. Russell, what is your advice?

Mr. RUSSELL. I would think it would be a technical amendment.

Senator WARNER. It is settled.

[The prepared statement of Mr. Pierini follows:]

Subcommittee on Energy and Minerals

of

Senate Committee on Energy and Natural Resources

Statement of William J. Pierini

for

Amoco Production Company

re

S 466

Mr. Chairman, I am William J. Pierini, the area landman in the northern division of the Denver regional office of Amoco Production Company.

I am here to testify in support of S 466 which, if enacted into law, would reinstate Federal Oil and Gas Lease No. M-15450 (N.D.). This lease expired on July 1, 1980, because of a failure to pay rent due on that date.

The lease was issued July 1, 1970, for a primary term of 10 years and so long thereafter as oil or gas is produced. It covers certain land in McKenzie County, North Dakota, and called for an annual rental of $617.00. The leaseholder is Amoco Production Company, and the working interest holder is Williston Basin Ltd., a partnership.

On June 27, 1980, drilling commenced and on July 1, 1980, the last day of the primary term, drilling had proceeded to a depth of 2,507 feet, and approximately $120,000 had been spent. Had the rent been timely paid, the

leaseholder would have been entitled to a two-year extension by law (30 U.S.C. § 226(e)). However, by mistake this rent was not paid.

Thereafter, and believing the rent to have been paid, drilling continued and a well capable of production was reached at a depth of 11,430 feet and at a cost of approximately $1,400,000. It is estimated that this well has a production capacity of about 100 barrels of oil per day.

The failure to pay the rent was discovered by the leaseholder late in the first week in October, and thereafter rent was tendered on October 9, 1980, three months and nine days after it was due.

Under the law the only way a leaseholder can reinstate a lease that has expired for failure to pay the rent when due, is for the leaseholder to petition the Secretary of Interior for reinstatement within 20 days from the day the rent was due, and convince him that the failure to pay the rent was justifiable, or not due to any lack of diligence upon the part of the leaseholder. Therefore, the only remedy for the interested parties under this lease is the enactment of a bill reinstating the lease.

I believe this lease should be reinstated for the following reasons:

1. The mistake was inadvertent. No reasonably prudent driller would proceed with the high cost of drilling

under a lease that had expired.

2. As soon as the leaseholder discovered the mistake, it immediately notified the BLM and tendered the rent.

3. It strikes me as inequitable for the United States to reap the bonanza of a well capable of producing 100 barrels of oil per day by virtue of a leaseholder making the innocent mistake of being three months late in making a rental payment of as little as $617.00.

4. The government didn't discover the error, the leaseholder did, and it promptly tendered the rent due.

5. Failure to reinstate the lease will continue to deprive the nation of a production from this property for months to come at a time when we desperately need to reduce imports of foreign oil.

6. If the lease is not reinstated, costly litigation may well develop which, while beneficial to the lawyers involved, would be a waste to those having any interest in the lease.

For these reasons, I hope this committee will agree that the bill should be passed and the lease reinstated. If enacted into law, naturally the leaseholder will be required to pay all rent that is due and comply with all of the other provisions of the lease, thus protecting all interests of the United States.

Senator WARNER. We will hear from the representative of Integrity Oil & Gas Co., Robert W. Wellingham, president.

We will insert your statement into the record and you may proceed.

## STATEMENT OF ROBERT W. WELLINGHAM, PRESIDENT, INTEGRITY OIL & GAS CO.

Mr. WELLINGHAM. Good morning. My name is Robert Wellingham. I am president of Integrity Oil & Gas Co. of Denver, Colo.

Senator WARNER. Do you want to make a statement or would you like us to follow the same procedure?

Mr. WELLINGHAM. That would be fine, sir.

Senator WARNER. We will ask the Department of the Interior to comment with respect to S. 651.

Mr. RUSSELL. The same comment applies to this bill, Mr. Chairman.

Mr. WELLINGHAM. There is one additional feature.

Senator WARNER. My understanding is the Department of the Interior suggests with reference to S. 651 that the same technical amendment be included as in S. 466.

Mr. EVANS. It is my understanding there is a little different amendment.

Mr. RUSSELL. Apparently in printing the bill, a line was dropped. That is the other amendment. We will give that to the staff.

Mr. EVANS. I concur, Mr. Chairman.

Senator WARNER. You concur with both suggestions of the Department of the Interior?

Mr. EVANS. Yes; that is correct.

Senator WARNER. Mr. Wellingham, any comment on your behalf?

Mr. WELLINGHAM. No, sir.

Senator WARNER. Is there anything in addition that you wish to state apart from your written statement?

Mr. WELLINGHAM. I think the language should be changed in the law some way to allow these sort of things to be taken care of at a much lower level.

Senator WARNER. I agree. Thank you.

[The prepared statement of Mr. Wellingham follows:]

Subcommittee on Energy - Mineral Resources

of

Senate Committee on Energy and Natural Resources

Testimony of R. W. Wellingham
Hearing 9-17-81

I am Robert W. Wellingham, President of Integrity Oil & Gas Company, 410 17th Street, Denver, Colorado. Integrity is a relatively small independent company that is engaged in oil and gas exploration and development in the Rocky Mountain Region. The company is privately owned although a public stock offering is planned in the near future.

Integrity acquired a 60% interest in U. S. lease W-46102 under a farmout agreement from Rampart Resources, Inc. The lease covers 118 acres in Natrona County, Wyomong. The working interest acquired by Integrity was transferred to various participating parties and Integrity retained and still owns an overriding royalty interest in the lease. Integrity has been appointed the operator of the lease by the parties owning an interest in it.

W-46102 is a lease issued by competitive bid and was granted for a 5 year term ending August 31, 1979. However, in accordance with the terms of the lease and 43 C.F.R. §3107.2, Integrity attempted to obtain a 2 year extension of the lease by commencing actual drilling prior to September 1, 1979.

Although the drilling operations were sufficient to extend the lease, the regulations also required that Integrity pay rental by August 31, 1979 in the amount of $240.00. Prior to the rental due date, Integrity had contacted Rampart Resources, Inc., the record title owner, and was assured by that company that rentals had been or would be timely paid. However, it now appears that no rental payment was in fact sent.

Integrity continued drilling and completed the well on February 14, 1980, at a total cost of approximately $575,000. The well is very successful and is capable of producing around 150 barrels of oil per day. On January 3, 1980, the Wyoming State BLM office stated in a memorandum to the U. S. Geological Survey that the BLM had received advance rental and that the lease was extended for two years pursuant to the regulation.

Because the lease covers only about one half of the lands within the drilling and spacing unit designated by the state of Wyoming for this well, W-46102 was communitized with the other federal lease containing lands in the drilling unit. The USGS approved the communitization Agreement. Finally, in June of 1980, more than nine months after the rental was due, the Wyoming State office of the BLM notified Integrity that rental had not been paid and that the lease was subject to automatic termination by operation of law

under the Mineral Leasing Act of 1920. Integrity then tendered the rental payment, but this was refused by the BLM.

Our attorneys have studied the language of the Mineral Leasing Act of 1920, as amended, and the regulations thereunder, and the administrative and judicial decisions interpreting these, and have concluded that there is almost no chance for success in an administrative or judicial appeal of the BLM decision and that the Secretary of the Interior has no discretion to reinstate the lease. The House of Representatives' Report on the amendment that added the strict termination provision to the Mineral Leasing Act specifically recognized the harshness of that provision, but chose the harsh course in the attempt to prevent intentional "mistakes." The committee stated that in deserving cases where the mistake was genuine, private relief legislation would be available. (H. R. Rep. No. 91-1005, 1970, U. S. Code Cong. & Adm. News 3005.)

We feel that the facts of Integrity's situation establish a deserving case for special relief legislation. The BLM not only did not issue the notice of termination within a reasonable time, but affirmatively declared that the lease was extended and that the rental had been paid. The USGS likewise affirmed the extension of the lease by approving the communitization agreement. Relying on the apparent continued validity of the lease as affirmed by these actions, Integrity invested substantial sums on behalf of itself and others to complete the Allemand Federal No. 1 well. We respectfully request approval of the bill under consideration.

Senator WARNER. On S. 1605, we will enter a statement on behalf of Senator Johnston which will be made a part of the record.

[The prepared statement of Senator Johnston follows:]

STATEMENT OF HON. J. BENNETT JOHNSTON, A U.S. SENATOR FROM THE STATE OF LOUISIANA

Mr. Chairman, the facts that give rise to S. 1605 are indeed quite simple. In an effort to put together a drilling program in an area of unknown production capabilities, Tenneco acquired a Federal lease from an airline pilot named Hudson Dean. Before Tenneco could undertake drilling operations in this wildcat area, the lease assignment from Mr. Dean had to be approved by the Bureau of Land Management. The approval process took some four months, and it is during that period that the problem arose. Tenneco thought that Mr. Dean was paying the delay rentals on the assigned lease, and Mr. Dean thought that Tenneco was paying the delay rentals. The result was that no delay rentals were paid and the lease lapsed.

The bill which I have introduced, S. 1605, would reinstate that lease subject to the payment of the back rentals on the property. Mr. Chairman, I believe this is a very worthwhile cause. Tenneco has already expended considerable sums to assemble this lease package, and they are willing and able to undertake drilling operations in this most risky area. To fail to reinstate this lease would not only punish Tenneco because of a simple misunderstanding, but would fly in the face of our oft-stated and nationally recognized goal of increasing domestic energy production. S. 1605 would avoid the undue time delays and money expenditures which would be required to reassemble this lease package, and would allow for timely exploration of this wildcat area.

Mr. Chairman, I applaud you for holding hearings on this matter, and I urge the members of this subcommittee to give favorable consideration to S. 1605. I ask unanimous consent that my remarks be made a part of the record on this subject.

Senator WARNER. On behalf of Tenneco, we will hear from Mr. J. Schmitt. Your statement will be inserted into the record.

## STATEMENT OF JAMES SCHMITT, HOUSTON COUNSEL, TENNECO OIL CO., ACCOMPANIED BY MILLARD CARR

Mr. SCHMITT. Mr. Chairman, we have two bills, S. 383 and S. 1605.

Senator WARNER. What procedure do you desire to follow?

Mr. SCHMITT. There is a technical amendment also in one of our bills, S. 383.

Mr. RUSSELL. It is the same amendment that applied to S. 466 and S. 651.

Mr. SCHMITT. We concur in that amendment.

Senator WARNER. Would you identify your colleague for the purpose of the record?

Mr. SCHMITT. This is Millard Carr, our division attorney from our Rocky Mountain operating division.

Senator WARNER. Is there anything further?

Mr. SCHMITT. S. 383 is a situation where we were drilling a well over the end of the primary term and the rental was not sent due to a clerical error in our system. In that case I think it is somewhat significant that this well we were drilling has since shown significant production and significant extension of the known field in the area. We expect with preliminary log tests to have about a 700-barrel-a-day well as opposed to average wells in that area of about 200 and today the average production from wells in the area is about 80 barrels a day.

This is a significant discovery and extension of the field. We have spent in excess of $2 million on the well and missed a delay rental of $1,300. We have also entered into a contract with Interior to

complete the well since it has been extinguished and have completed the well and are going to produce that well on a cost basis.

With respect to Florida, this was a lease which we entered into a contract with a Mr. Hudson Dean who lives in the State of Colorado who is an airline pilot. As you know, a lease from the Federal Government or an assignment of a lease is not effective until it is approved by the BLM.

When Mr. Dean sent us the lease pursuant to our purchase agreement, he mistakenly felt his obligation ended and we sent the lease to the BLM. Four months later when it was approved the time for payment of the rental had passed by 4 days.

When it came back to us it went into our system and we discovered it at that time.

Tenneco certainly supports the Department's efforts to try to give the Secretary some discretion under the Mineral Leasing Act to determine on an equitable basis solutions to problems that arise like these which take your time and efforts.

[The prepared statement of Mr. Schmitt follows:]

STATEMENT BY TENNECO OIL COMPANY
BEFORE THE SENATE SUB-COMMITTEE
ON ENERGY & MINERAL RESOURCES
SEPTEMER 17, 1981

My name is James Schmitt. I am Houston counsel for Tenneco Oil Company.

First I wish to thank you and the members of the sub-committee on behalf of Tenneco Oil Company for allowing me this opportunity to appear here this morning to urge your support of Senate Bill 383, introduced by Senators Burdick and Andrews of North Dakota and Senate Bill 1605, introduced by Senator Johnston of Louisiana.

Each of these bills seek congressional reinstatement of separate Federal oil and gas leases which have expired because of the failure to timely pay the required delay rentals. Except for the lease description, the language of the bills are identical.

Turning first to Senate Bill 383, the background facts can be briefly summarized. The lease in question is a non-competitive lease, issued on October 1, 1970, with a term of ten years ending September 30, 1980, and covering 659.68 acres in Billings County, North Dakota. Tenneco's interest in the lease came through an October, 1979 purchase from UV Industries, Inc. of certain of its oil and gas properties. Tenneco is lessee of record with a partial working interest in the subject lease.

During the first six months that Tenneco held an interest in the lease, a well that had been previously drilled and abandoned was re-entered and substantial drilling, reworking and completion operations were conducted. In September of 1980 this well was shut-in as lacking sufficient economic production capacity.

Also, in the September, 1980, pursuant to a joint unit operating agreement to which a part of the subject lease acreage was contributed by Tenneco, a new well commenced drilling on the subject lease. Drilling of this well continued over the end of the primary term of the lease.

Contrary to private and state lease provisions, drilling over the end of the primary term of a Federal lease does not extend the term to the end of the drilling period unless an eleventh-year advance delay rental is paid. Due to clerical oversight, the $1,320.00 delay rental on the lease was not timely paid. On December 10, 1980, Tenneco suspended operations on the well in accordance with instructions from the United States Geological Survey (USGS).

An investigation was begun in our Rocky Mountain operating division headquartered in Denver, Colorado, to determine how the oversight had occurred. After execution of the joint operating agreement on July 30, 1980, Tenneco's Properties department was notified by its Land department that drilling was contemplated and that the eleventh-year rental should be paid on the lease. The appropriate titleman in the Properties department instructed the rental clerk to have the rental check prepared and mailed in August. Unfortunately, the rental clerk was new, having only transferred from another department a few weeks prior, and simply mislaid or lost the note given by the titleman. It should be pointed out that in September of 1980 a single rental clerk was responsible for preparation of more than 600 lease rental checks each month. Since that time a rental supervisor and an additional rental clerk have been employed.

By the time the error was discovered in December, 1980, the well had been drilled to its target depth and permanent casing set with over $1.7 million expended. Indications that we had made a significant oil discovery were positive. Before a completion rig could be moved on location, Tenneco was notified by USGS to suspend operations. Since that time, Tenneco has entered into a contract with the Interior Department to complete the well and commence production pending the outcome of efforts to obtain reinstatement. Completion operations are now in progress. This oil well will represent a significant extension of the producing field in the proximity of the well. The present wells in this field had initial producing capacities averaging 205 barrels per well per day. The current production per well averages around 80 barrels a day. However, log analysis on this new well indicates we should obtain production of as much as 700 barrels per day.

The cost of drilling and completing the well to date is almost two million dollars and should total about $2.2 million.

Tenneco requests that favorable consideration be given Senate Bill 383 for several reasons:

Tenneco certainly intended to cause the timely payment of the small delay rental. Any system utilized for making delay rental payments must involve decisions and executions by people, because, for example, some rentals may be intentionally not paid. In this case an instruction was given but simply not carried out. We are hopeful that this clerical error will not deprive Tenneco of the fruits of its labor.

Over $2 million has already been risked in an effort to develop new reserves on these Federal lands. This risk and investment by the parties in the joint operating unit and the resulting success is what now gives value to the lease.

Reinstatement of this lease will undoubtedly insure the timely and orderly production from and further development of the subject lease.

Without knowing the outcome of our efforts here, Tenneco has proceeded to contract with Interior to complete and produce this well and is doing so on a pure cost basis without profit.

The facts demonstrated that Tenneco has been diligent in its efforts to explore and develop the subject Federal lease, as two separate exploration activities were commenced during the first year in which Tenneco owned an interest in the lease.

Turning now to Senate Bill 1605. The unfortunate fact is that, although I know of few other instances in Tenneco's history where federal delay rentals were not timely paid, in July, 1980 a second delay rental was not paid on a Federal lease covering 2,107.53 acres in Santa Rosa County, Florida.

The facts of the two cases are, however, different.

In the Florida case, the non-competitive Federal lease in question was issued on July 1, 1979, to one Gordon Carew. Later that year the lease was assigned to Mr. Hudson Dean who is an airlime pilot living in Colorado. On March

14, 1980, Tenneco and Mr. Dean entered into a contract wherein Tenneco agreed to purchase the lease for $25.00 per net acre plus a 5% overriding royalty. Mr. Dean, pursuant to the agreement, sent to Tenneco an assignment of the lease which in turn was sent to the Bureau of Land Management (BLM), Eastern States Land Office, for approval. The request for approval was received by the BLM on March 24, 1980. On July 28, 1980, over four months later, Tenneco received BLM's approval. In the process of placing the new lease in the delay rental payment system in our Gulf Coast operating division, it was discovered that the delay rental receipt for 1980 was missing.

Because BLM approval is necessary to make an assignment effective, Tenneco does not assume the delay rental obligation until the lease has been legally assigned to it. Mr. Dean, on the other hand, believed that his obligation to pay such rentals ended when he mailed the assignment. Thus, neither party made the payment of $2,108.00.

Other important facts in the instance include:

1. The Federal Government owns only a three-quarters (3/4) interest in the minerals underlying the leased lands. The other one-quarter interest in the proposed drillsite section is leased to a Tenneco company by the State of Florida.

2. There is no production from the leased lands or has there ever been in the general area.

3. The lease covers 2,107.53 acres and Tenneco and its partners hold 8,358 acres around the lease and contiguous to it.

4. Without this lease on the proposed drillsite, Tenneco will have no choice but to either hold its leases with only the hope of purchasing the lost lease some time in the future from a new owner, or allowing the other leases to expire and abandon the project.

5. Tenneco has expended in excess of $348,000 in lease acquisitions and geophysical costs to date on this project.

We believe that is is clearly in the best interests of the Federal government to have this lease reinstated. Most importantly, such reinstatement will insure that a wildcat well will be drilled in an effort to find new reserves of oil or gas. Drilling in the Florida Panhandle is at an all-time ten-year low. If the bill passes, Tenneco can assure this sub-committee that the well will be drilled. If this lease and the surrounding leases were allowed to expire, this block might never again be established and the proposed high risk exploration prospect might never occur.

Also, because the lease covers only three-quarters (3/4) of the minerals, a new lease owner either could not or would not drill on the land without the remaining one-quarter interest and the surrounding acreage that makes this wildcat a viable prospect.

Finally, I would like to make a point which applies to these bills and similar bills before the Congress now and which have arisen in the past. The Mineral Leasing Act as it is presently written does not allow the Secretary of Interior any discretion in resolving these cases on an equitable basis. Authority for such discretion has been sought in past years by the Department. Clerical errors or other excusable circumstances resulting from missing a minor delay rental can obviously cause an otherwise diligent lessee great harm. Tenneco supports efforts to legislate an equitable system which would make proceedings like these unnecessary.

Again, thank you for your time and attention to these matters which are of utmost importance to Tenneco. I will be happy to answer questions you may have.

Thank you.

Senator WARNER. You heard the statement made by Mr. Harvey which I found very interesting. We will have to get the views from the industry before we move with new language.

Is there anything further on your part?

Mr. SCHMITT. No, sir.

Senator WARNER. Is there anything further on this subject?

[No response.]

Senator WARNER. Thank you very much, gentlemen. The hearing is adjourned.

[Whereupon, at 10:35 a.m., the hearing was adjourned.]

○